

Raphael
By email: foi+request-8696-92ec8ac9@righttoknow.org.au

Our reference: <SHC22-26777>

Dear Raphael

Freedom of Information request

1. I am writing about your Freedom of Information (FOI) request under the *Freedom of Information Act 1982* (FOI Act) made on 4 April 2022 for access to documents held by the Australian Public Service Commission (Commission).
2. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from www.legislation.gov.au

Documents relevant to your request

3. You requested access to documents in the following terms:

“...

Under section 53 of the PID Act, to the extent that an investigation under the PID Act relates to an alleged breach of the Code of Conduct (within the meaning of the Public Service Act 1999), the principal officer or their delegate must comply with the procedures established under subsection 15(3) of the Public Service Act.

According to an article published in the Australian on 8 February 2022 (Untried lawyers score key positions) “[i]n late December 2020, Ms McMullan wrote to Ms Lagos to inform her she had found the recruitment process that led to the court promoting [a female to the position of registrar] had breached the Public Service Act ...”

Presumably, this contravention of the Public Service Act was a contravention of the Code of Conduct because paragraph 13(11)(a) of the Public Service Act requires all APS employees to, at all times, behave in a manner that upholds the APS Employment Principles (among other things).

Part A

Under the APSC's procedures established under s 15(3) of the Public Service Act:

If a determination is made in relation to a suspected breach of the Code by a person who is, or was, an APS employee in the Commission, a written record must be made of:

- a. the suspected breach; and*
- b. the determination; and*
- c. any sanctions imposed as a result of a determination that the employee has breached the Code; and*
- d. if a statement of reasons was given to the person regarding the determination in relation to suspected breach of the Code, or, in the case of an employee, regarding the sanction decision, that statement of reasons or those statements of reasons.*

Under the FOI Act, I request a copy of the statement of reasons prepared by Ms McMullan in relation to the contravention of the Public Service Act. The document may be provided to me by return email.

Part B

Under the APSC's procedures established under s 15(3) of the Public Service Act:

A determination may not be made in relation to a suspected breach of the Code by a person unless reasonable steps have been taken to

- a. inform the person of:*
 - i. the details of the suspected breach of the Code, including any subsequent variation of those details; and*
 - ii. where the person is an APS employee, the sanctions that may be imposed on them under subsection 15(1) of the Act; and*
- b. give the person a reasonable opportunity to make a statement in relation to the suspected breach.*

It is public knowledge that Ms McMullan found that the female registrar was selected over a field of candidates who had been admitted as legal practitioners, admission being an essential qualification for the registrar position (see article published in the Australian on 8 February 2022 referred to above).

Under the FOI Act, I request copies of any documents provided to the person or persons who was or were suspected of breaching the Public Service Act (i.e. probably s 13(1)(a) of the Act), those persons presumably being responsible for selecting the female registrar above other qualified and meritorious candidates, by Ms McMullan.

The documents may be provided by email.”

4. I have interpreted Part A of your request to request a copy of any statement of reasons prepared by Ms McMullan given to a person regarding a determination in relation to a

suspected breach of the APS Code of Conduct, because your request presumes “*this contravention of the Public Service Act was a contravention of the Code of Conduct*”.

5. I have interpreted Part B of your request to request any documents provided to any person or persons who was or were suspected of breaching the APS Code of Conduct by Ms McMullan.

Decision on your FOI request

6. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
7. The FOI Act gives you the right to obtain access to government documents and to apply for the amendment or annotation of records of personal information held by government.
8. Subsection 24A(1) of the FOI Act provides that an agency may refuse a request for access to a document if the agency is satisfied that all reasonable steps have been taken to find the document and the agency is satisfied that the document does not exist.
9. I am satisfied that all reasonable steps have been taken to find any document relevant to your request. No documents were found. I have therefore decided to refuse your request for access under section 24A of the FOI Act.

Contacts

10. If you require clarification on matters in this letter please contact the Commission’s FOI Officer by telephone on (02) 6202 3500 or by email at foi@apsc.gov.au.

Review rights

11. You are entitled to seek review of this decision. Your review rights are set out at **Attachment A**.

Yours sincerely



Giorgina Strangio

Authorised FOI decision maker

2 May 2022

Rights of Review

Asking for a full explanation of a Freedom of Information decision

If you are dissatisfied with this decision, you may seek review. Before you seek review of a Freedom of Information (FOI) decision, you may contact us to discuss your request and we will explain the decision to you.

Seeking review of a Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (the FOI Act) may give you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by seeking:

1. an internal review by an different officer of the Australian Public Service Commission; and/or
2. external review by the Australian Information Commissioner.

There are no fees applied to either review option.

Applying for a review by an Internal Review Officer

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be made in writing within 30 days of receiving this letter to:

Email: foi@apsc.gov.au

Post: The FOI Officer
Australian Public Service Commission
B Block, Treasury Building
GPO Box 3176
Parkes Place West
PARKES ACT 2600

You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original FOI decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision. You have 60 days to apply in writing for a review by the Office of the Australian Information Commissioner (the OAIC) from the date you received this letter or any subsequent internal review decision.

You can lodge your application:

Online: www.oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

The OAIC encourage applicants to apply online. Where possible, to assist the OAIC you should include your contact information, a copy of the related FOI decision and provide details of your reasons for objecting to the decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: www.oaic.gov.au

Commonwealth Ombudsman

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: www.ombudsman.gov.au